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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,243	10/12/2005	Michael Brock	Muller-47	6495
7590		11/05/2007		
C. James Bushman Browning Bushman Suite 1800 5718 Westheimer, Houston, TX 77057-5771				
			EXAMINER	
			SOROUSH, LAYLA	
			ART UNIT	PAPER NUMBER
			1617	
			MAIL DATE	DELIVERY MODE
			11/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,243	<b>Applicant(s)</b> BROCK, MICHAEL	
	<b>Examiner</b> Layla Soroush	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-12 and 25-26, drawn to a microemulsion comprising at least the following components: (A) 0.5 to 70% by weight of alkanolammonium salts of the alkylsulfates and/or alkylpolyalkyleneglycoethersulfates having the following structure  $\text{RI}-\text{O}-(\text{CpH}_2\text{pO})_m-\text{SO}_3-\text{HN}^+\text{R}_2\text{R}_3\text{R}_4$ , wherein  $\text{R}_1$  is a C8- to C20- hydrocarbon radical,  $p$  is an integer from 2 to 5, where  $p$  can be different for each  $m$ ,  $\text{R}_2$  is H, a C1- to C6- alkyl or a C2- to C4- hydroxyalkyl,  $\text{R}_3$  is H, a C1- to C6 alkyl or a C2- to C4- hydroxyalkyl,  $\text{R}_4$  is a C2- to C4- hydroxyalkyl, and  $m$  is an integer from 0 to 7, or mixtures thereof, (B) 20 to 95% by weight of water, (C) 0.1 to 20% by weight of one or more oil component(s), (D) 0.1 to 20% by weight of one or more mono- or polyhydroxy C2- to C24- alcohol(s), and an additive selected from the group consisting of: (E.1) 0.1 to 15% by weight of one or more UV filter(s) (E.2) 0.1 to 3% by weight of one or more antidandruff substance(s) and mixtures thereof, each percentage hereof based on the total composition.

Group II, claim(s) 18-24, drawn to a method of protecting skin by applying to the skin a microemulsion according to any one of claims 1 or 2.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Groups I and II lack unity because they do not share a common special technical feature. "With respect to a group of inventions claimed in an international application unity of invention exists only when there is a technical relationship among the claimed

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inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" is defined in PCT Rule 13.2 as meaning those features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description or drawings (if any)." (MPEP p.1850 II. **Determination of "Unity of Invention"**). The special technical feature of Group I is a microemulsion comprising at least the following components: (A) 0.5 to 70% by weight of alkanolammonium salts of the alkylsulfates and/or alkylpolyalkyleneglycoethersulfates having the following structure  $R_1-O-(C_pH_{2p}O)_m-SO_3-HN^+R_2R_3R_4$ , wherein  $R_1$  is a C8- to C20- hydrocarbon radical,  $p$  is an integer from 2 to 5, where  $p$  can be different for each  $m$ ,  $R_2$  is H, a C1- to C6- alkyl or a C2- to C4- hydroxyalkyl,  $R_3$  is H, a C1- to C6 alkyl or a C2- to C4- hydroxyalkyl,  $R_4$  is a C2- to C4- hydroxyalkyl, and  $m$  is an integer from 0 to 7, or mixtures thereof, (B) 20 to 95% by weight of water, (C) 0.1 to 20% by weight of one or more oil component(s), (D) 0.1 to 20% by weight of one or more mono- or polyhydroxy C2- to C24- alcohol(s), and an additive selected from the group consisting of: (E.1) 0.1 to 15% by weight of one or more UV filter(s) (E.2) 0.1 to 3% by weight of one or more antidandruff substance(s) and mixtures thereof, each percentage hereof based on the total composition, while the special feature of Group II is drawn to a method of protecting skin by applying to the skin a microemulsion according to any one of claims 1 or 2. Prior art discloses the composition as stated in Group I, so there is no novel composition as claimed, and therefore, there is a lack in unity (Brock et al. WO 00/47166-- IDS).

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If applicant elects Groups I-II, an election of species is required. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species are as follows:

Various alkanolammonium salts of the alkylsulfates and/or

alkylpolyalkyleneglycolethersulfates having the following structure  $\text{RI}-\text{O}-(\text{CpH}_2\text{pO})_m-$

$\text{SO}_3\text{-HN}^+\text{R}_2\text{R}_3\text{R}_4$ ; oil components mono- or polyhydroxy C2- to C24- alcohol(s);

surfactants; electrolytes; and products obtained by the alkoxylation of triglycerides,

which is esterified, wholly or in part, with C6- to C22- fatty acids, wherein preferably 2 to

40 moles of alkoxylation agent are employed per mole of triglyceride.

The above species are distinct. The search required for each treatment would represent an undue burden on the Office. A single species must be chosen for further consideration. Currently, claims 1-26 are considered generic.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

### **Election**

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

A telephone call to the attorney is not required where: 1) the restriction requirement is complex, 2) the application is being prosecuted pro se, or 3) the examiner knows from past experience that a telephone election will not be made (MPEP 812.01). Since the restriction election is considered complex, a call to the attorney for a telephone election was not made.

### **Conclusion**

Effective November 1, 2007, if applicant wishes to present more than 5 independent claims or more than 25 total claims in an application, applicant will be required to file an examination support document (ESD) in compliance with 37 CFR 1.265 before the first Office action on the merits (hereafter "5/25 claim threshold"). See Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications, 72 Fed. Reg. 46715 (Aug. 21, 2007), 1322 Off. Gaz. Pat. Office 76 (Sept. 11, 2007) (final rule). The changes to 37 CFR 1.75(b) apply to any pending applications in which a first Office action on the merits (FAOM) has not been mailed before November 1, 2007. Withdrawn claims will not be taken into account in determining whether an application exceeds the 5/25 claim threshold. For more information on the final rule, please see <http://www.uspto.gov/web/offices/pac/dapp/opla/presentation/clmcontfinalrule.html>.

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In response to the restriction requirement set forth in this Office action, applicant is required to file an election responsive to the restriction requirement. Applicant may not file a suggested restriction requirement (SRR) in lieu of an election responsive to the restriction requirement as a reply. A SRR alone will not be considered a *bona-fide* reply to this Office action.

If applicant elects an invention that is drawn to no more than 5 independent claims and no more than 25 total claims, applicant will not be required to file an ESD in compliance with 37 CFR 1.265 that covers each of the elected claims. If the elected invention is drawn to more than 5 independent claims or more than 25 total claims, applicant may file an amendment canceling a number of elected claims so that the elected invention would be drawn to no more than 5 independent claims and no more than 25 total claims.

If the restriction requirement is mailed on or after November 1, 2007, applicant is also required to file an ESD in compliance with 37 CFR 1.265 that covers each of the elected claims, unless the elected invention is drawn to no more than 5 independent claims and no more than 25 total claims taking into account any amendment to the claims. To avoid the abandonment of the application, the ESD (if required) and the election must be filed within **TWO MONTHS** from the mailing date of this Office action. The two-month time period for reply is extendable under 37 CFR 1.136.

If the restriction requirement is mailed before November 1, 2007, the election must be filed within **ONE MONTH** or THIRTY DAYS, whichever is longer, from the mailing date of this Office action. The time period for reply is extendable under 37 CFR 1.136. Furthermore, if the elected invention is drawn to more than 5 independent claims or more than 25 total claims taking into account any amendment to the claims, the Office will notify applicant and provide a time period in which applicant is required to file an ESD in compliance with 37 CFR 1.265 covering each of the elected claims or amend the application to contain no more than 5 independent elected claims and no more than 25 total elected claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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